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9 **UNITED STATES DISTRICT COURT**
10 **WESTERN DISTRICT OF WASHINGTON**

11 MARIAN J. LODGE and TROY LAMAR
12 RENDON,

Plaintiffs,

13 v.
14 BANK OF AMERICA,

Defendant.

Case No. C07-5241JKA

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

16 This matter comes before the court on cross motions for summary judgment. The court
17 has considered all materials submitted in support and in response to each motion. Additionally,
18 the court considers the arguments of counsel presented orally to the court on July 2, 2008. The
19 parties acknowledge that there is no material issue of fact in dispute that would preclude the court
20 disposing of the matter at this stage of the proceedings. Because the alleged actions and inactions
21 of plaintiffs all relate to plaintiff Marian Lodge, references to "plaintiff" hereafter are with regard
22 to the plaintiff Marian Lodge.

UNDISPUTED FACTS:

23 1. On December 29, 1981, plaintiff Marian J. Lodge purchased a 30-month
24 Market Rate Grobond from Seattle National Bank (defendant's predecessor in interest) in the sum
25 of \$3,268.82 in the name of Marion Rendon ITF (In Trust For) her then seven year old son, Troy
26 Rendon. The certificate provided for 13.2% interest through its maturity date of June 29, 1984.

27 2. The bond contained the following provisions pertinent to this cause:

1 AUTOMATIC RENEWAL. This First Bank Bond will be renewed
2 for successive maturity periods unless (1) the funds on deposit are
3 withdrawn at any maturity date or within ten days thereafter, or (2) the
4 Bank at its option gives notice prior to any maturity date that it will
not renew. The Bank will advise the registered owner by mail prior
to each automatic renewal of the length of the maturity period and
the rate of interest or the method of computing that rate applicable
to that period.

5 MAILING ADDRESS AND CORRESPONDENCE. Any notices
6 or payments of principal or interest which the Bank mails to the
7 registered owner will be mailed to the address shown on the records
of the issuing Branch of the Bank. Any change of address or other
correspondence concerning this First Bank Bond must be mailed to
the issuing Branch

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9 3. Both parties acknowledge that the bank sent plaintiff a Form 1099 for the calendar year
10 1984 showing interest paid in the sum of \$290.33. This amount is consistent with interest at the
11 rate of 13.2% for the last six months of the certificate (January through June 29, 1984). Neither
12 party has any record of any other communication between the bank and the plaintiff until plaintiff
13 presented the original of the "Market Rate Grobond" to an Arizona branch of Bank of America in
14 2005. If renewed pursuant to notice, the interest rate would have been adjusted to reflect the
"market rate" for each successive period.

15 4. Plaintiff moved several times after purchasing the bond. She left forwarding addresses
16 with the United States Post Office. She never notified the bank of her change(s) of address.

17 5. Plaintiff never received a Form 1099 after 1984 and never reported any interest on the
18 investment on her income tax returns.

19 6. Pursuant to bank retention guidelines, supported by federal law (31CFR103.3A(d)),
20 the bank destroys its records after a five-year period of non-activity. Thereafter, unclaimed funds
21 escheat to the State of Washington pursuant to RCW. 63.29, as abandoned. Neither the bank
22 nor the State of Washington has any record of plaintiffs' money being processed pursuant to
RCW 63.29.

23 7. Plaintiff alleges that she never redeemed the certificate. She also alleges that she never
24 received notices of renewal options/terms, and that she never received interest statements (other
25 than the one 1984 Form 1099). The defendant bank can present no documentary evidence to the
26 contrary. Plaintiff admits that she never reported income tax on the interest she claims to have
been earning on the certificate over these many years.

1 **DISCUSSION**

2 Plaintiff's contention that she never redeemed or attempted to redeem the certificate prior
3 to 2005 is consistent with her possession of the certificate and the lack of any bank record to
4 substantiate redemption. As both a practical and legal matter, there is little more a holder in
5 plaintiff's position can do to support her claim of nonpayment other than present the original
6 certificate and swear under oath that she had not earlier redeemed the certificate. In this instance,
7 the lack of any record of escheat to the State of Washington as abandoned funds pursuant to
8 RCW 63.29 is offered as rebuttal evidence. The court further understands that holders are able
9 to redeem bonds or certificates without presenting the original, provided they comply with
10 alternatives offered by the bank such as an affidavit of lost certificate or a security bond for a
11 reasonable period of time. Defendant contends that plaintiff's contention of non-redemption is
12 inconsistent with her lack of inquiry for over 20 years, failure to determine or report interest to
13 the Internal Revenue Service, and failure to request 1099 Forms over the years (having received
14 such a form for the calendar year 1984). It is relevant to the parties respective claims to note that
15 all the Grobond has an automatic renewal provision, it does not state that the automatic renewal
16 would carry the original interest rate. Read from its four corners, the holder knows that renewal
17 periods will be subject to changed periods and interest rates.

18 Defendant's assertion of laches as a defense is somewhat negated by plaintiff's claim that
19 she was unaware she had a claim until the moneys were denied her in 2005. It is meritorious,
20 however, considered in light of the plaintiff's complete silence for such an extended period of
21 time. The lack of inquiry for over 20 years, coupled with a duty to report the interest for income
22 tax purposes, and failure to keep the defendant advised of her whereabouts, perpetuated today's
23 dilemma.

24 Plaintiff contends that with interest compounded daily at 13.2% she is entitled to
25 \$101,142.78 through December 31, 2007, and interest thereafter at the rate 13.2% until paid.
26 Defendant denies any liability on the basis that the Grobond was either redeemed in 1984 or
27 abandoned. Alternatively, defendant computes the amount of interest commencing at the end date
28 of the first 30-month period through December 31, 2006, as \$12,811.76, utilizing the market rate.

26 **CONCLUSION:**

1 It is undisputed that if the parties had acted in accordance with the terms of the Grobond
2 as authored, the plaintiff would have received interest at the rate of 13.2% during the first 30-
3 month period, and interest at the market rate thereafter. Although the bond provides that “while
4 on deposit, interest will be earned at the rate stated above [13.2%],” nowhere is it contemplated
5 that there will be an automatic renewal without an adjustment of the interest rate.
6 To rule otherwise, would be to allow plaintiff to recover funds not contemplated by the terms of
7 the Grobond by virtue of her inexplicable lack of interest and obligation for a protracted period of
8 time.

9 ACCORDINGLY, the court finds that plaintiffs motion for summary judgment is denied
10 to the extent plaintiff seeks interest on the Grobond at the rate of 13.2%. Defendant’s motion for
11 summary judgment *in the alternative* is granted. Plaintiffs are entitled to redeem their Market
12 Rate Grobond # 00 737661 for the sum of \$3268.82 together with interest at the rate of 13.2%
13 through June 29, 1984, and daily compounded interest thereafter at the market rate, as would
14 have been fixed by defendant if plaintiff received notice of the renewal option and interest rate for
15 each successive period.

16 Dated this 22nd day of July 2008.

17 /s/ J. Kelley Arnold
18 J. Kelley Arnold
19 U.S. Magistrate Judge
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